

Jul 09, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PATRICK FLEETWOOD and MICHAEL
FLEETWOOD,
Plaintiffs,
v.
WASHINGTON STATE UNIVERSITY,
Defendant.

No. 2:20-CV-00355-SAB

**ORDER GRANTING
STIPULATED MOTION FOR
PROTECTIVE ORDER**

Before the Court is the parties' Stipulated Motion for Protective Order, ECF No. 30. Plaintiffs are represented by Matthew Crotty. Defendant is represented by Debra Lefing and Brian Baker. The motion was considered without oral argument.

The parties agree and request that the Court enter a protective order for Defendant's production of unredacted documents. Specifically, the parties seek to allow Defendant to produce unredacted University emails that directly pertain to the events at issue in this lawsuit, but which are protected by the Family Educational Rights and Privacy Act. The Court finds good cause to grant the motion.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Motion for Protective Order, ECF No. 30, is **GRANTED.**

2. The Court enters the following protective order into the record:

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**ORDER GRANTING STIPULATED MOTION FOR PROTECTIVE
ORDER # 1**

1 **1. PURPOSES AND LIMITATIONS**

- 2 a. Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection may
4 be warranted. This protective order does not confer blanket protection
5 on all disclosures or responses to discovery. The protection it affords
6 from public disclosure and use extends only to the limited information
7 or items that are entitled to confidential treatment under the applicable
8 legal principles, and it does not presumptively entitle parties to file
9 confidential information under seal.

10 **2. "CONFIDENTIAL" MATERIAL**

- 11 a. "Confidential" material shall include the following documents and
12 tangible things produced or otherwise exchanged: unredacted versions
13 of the records described in subparts (a) through (c) which are
14 education records containing personally identifiable student
15 information pursuant to 20 U.S.C. § 1232g(a).
- 16 i. (a) WSU emails bates numbered 02080221-0226, 02080315-
17 0316, 02080361-0367, 02080369-0370, 02080372, 02080491,
18 02080521-0522, 02080524-0541, 02080671, 02080676,
19 02080685-0686, 02080688, 02080696, 02080715, 02080717,
20 02080744, 02080781, 02080783-0784, 02080792, 02080797,
21 02080899-927;
- 22 ii. (b) WSU investigative documents pertaining to Plaintiff's
23 underlying administrative action;
- 24 iii. (c) To the extent any future supplemental productions of
25 records fall into topic area (a) or (b) above, WSU will provide
26 those in unredacted form after making a reasonable effort to
27 notify the current or former students whose personally
28 identifiable information is contained therein.

1 **3. SCOPE**

- 2 a. The protections conferred by this agreement cover not only
3 confidential material (as defined above), but also (1) any information
4 copied or extracted from confidential material; (2) all copies, excerpts,
5 summaries, or compilations of confidential material; and (3) any
6 testimony, conversations, or presentations by parties or their counsel
7 that might reveal confidential material. However, the protections
8 conferred by this agreement do not cover information that is in the
9 public domain or becomes part of the public domain through trial or
10 otherwise.

11 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

- 12 a. Basic Principles. A receiving party may use confidential material that
13 is disclosed or produced by another party or by a non-party in
14 connection with this case only for prosecuting, defending, or
15 attempting to settle this litigation. Confidential material may be
16 disclosed only to the categories of persons and under the conditions
17 described in this agreement. Confidential material must be stored and
18 maintained by a receiving party at a location and in a secure manner
19 that ensures that access is limited to the persons authorized under this
20 agreement.
- 21 b. Disclosure of “CONFIDENTIAL” Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the
23 designating party, a receiving party may disclose any confidential
24 material only to:
- 25 (a) the receiving party’s counsel of record in this action, as well
26 as employees of counsel to whom it is reasonably necessary to
27 disclose the information for this litigation;
- 28

1 (b) the officers, directors, and employees (including in house
2 counsel) of the receiving party to whom disclosure is
3 reasonably necessary for this litigation, unless the parties agree
4 that a particular document or material produced is for
5 Attorney's Eyes Only and is so designated;
6 (c) experts and consultants to whom disclosure is reasonably
7 necessary for this litigation and who have signed the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
9 (d) the court, court personnel, and court reporters and their
10 staff;
11 (e) copy or imaging services retained by counsel to assist in the
12 duplication of confidential material, provided that counsel for
13 the party retaining the copy or imaging service instructs the
14 service not to disclose any confidential material to third parties
15 and to immediately return all originals and copies of any
16 confidential material;
17 (f) during their depositions, witnesses in the action to whom
18 disclosure is reasonably necessary and who have signed the
19 "Acknowledgment and Agreement to Be Bound", unless
20 otherwise agreed by the designating party or ordered by the
21 court. Pages of transcribed deposition testimony or exhibits to
22 depositions that reveal confidential material must be separately
23 bound by the court reporter and may not be disclosed to anyone
24 except as permitted under this agreement;
25 (g) the author or recipient of a document containing the
26 information or a custodian or other person who otherwise
27 possessed or knew the information.
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- 1 c. Filing Confidential Material. Before filing confidential material or
2 discussing or referencing such material in court filings, the filing party
3 shall confer with the designating party to determine whether the
4 designating party will remove the confidential designation, whether
5 the document can be redacted, or whether a motion to seal or
6 stipulation and proposed order is warranted.

7 **5. DESIGNATING PROTECTED MATERIAL**

- 8 a. Exercise of Restraint and Care in Designating Material for Protection.

9 Each party or non-party that designates information or items for
10 protection under this agreement must take care to limit any such
11 designation to specific material that qualifies under the appropriate
12 standards. The designating party must designate for protection only
13 those parts of material, documents, items, or oral or written
14 communications that qualify, so that other portions of the material,
15 documents, items, or communications for which protection is not
16 warranted are not swept unjustifiably within the ambit of this
17 agreement. Mass, indiscriminate, or routinized designations are
18 prohibited. Designations that are shown to be clearly unjustified or
19 that have been made for an improper purpose (e.g., to unnecessarily
20 encumber or delay the case development process or to impose
21 unnecessary expenses and burdens on other parties) expose the
22 designating party to sanctions. If it comes to a designating party's
23 attention that information or items that it designated for protection do
24 not qualify for protection, the designating party must promptly notify
25 all other parties that it is withdrawing the mistaken designation.

- 26 b. Manner and Timing of Designations. Except as otherwise provided in
27 this agreement, or as otherwise stipulated or ordered, disclosure or
28 discovery material that qualifies for protection under this agreement

1 must be clearly so designated before or when the material is disclosed
2 or produced.

3 (a) Information in documentary form: (e.g., paper or electronic
4 documents and deposition exhibits, but excluding transcripts of
5 depositions or other pretrial or trial proceedings), the
6 designating party must affix the word "CONFIDENTIAL" to
7 each page that contains confidential material. If only a portion
8 or portions of the material on a page qualifies for protection, the
9 producing party also must clearly identify the protected
10 portion(s) (e.g., by making appropriate markings in the
11 margins).

12 (b) Testimony given in deposition or in other pretrial or trial
13 proceedings: the parties must identify on the record, during the
14 deposition, hearing, or other proceeding, all protected
15 testimony, without prejudice to their right to so designate other
16 testimony after reviewing the transcript. Any party or non-party
17 may, within fifteen days after receiving a deposition transcript,
18 designate portions of the transcript, or exhibits thereto, as
19 confidential.

20 (c) Other tangible items: the producing party must affix in a
21 prominent place on the exterior of the container or containers in
22 which the information or item is stored the word
23 "CONFIDENTIAL." If only a portion or portions of the
24 information or item warrant protection, the producing party, to
25 the extent practicable, shall identify the protected portion(s).

26 c. Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing
28 alone, waive the designating party's right to secure protection under

1 this agreement for such material. Upon timely correction of a
2 designation, the receiving party must make reasonable efforts to
3 ensure that the material is treated in accordance with the provisions of
4 this agreement.

5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

- 6 a. Timing of Challenges. Any party or non-party may challenge a
7 designation of confidentiality at any time. Unless a prompt challenge
8 to a designating party's confidentiality designation is necessary to
9 avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party
11 does not waive its right to challenge a confidentiality designation by
12 electing not to mount a challenge promptly after the original
13 designation is disclosed.
- 14 b. Meet and Confer. The parties must make every attempt to resolve any
15 dispute regarding confidential designations without court
16 involvement. Any motion regarding confidential designations or for a
17 protective order must include a certification, in the motion or in a
18 declaration or affidavit, that the movant has engaged in a good faith
19 meet and confer conference with other affected parties in an effort to
20 resolve the dispute without court action. The certification must list the
21 date, manner, and participants to the conference. A good faith effort to
22 confer requires a face-to-face meeting or a telephone conference.
- 23 c. Judicial Intervention. If the parties cannot resolve a challenge without
24 court intervention, the designating party may file and serve a motion
25 to retain confidentiality under Local Civil Rule 7. The burden of
26 persuasion in any such motion shall be on the designating party.
27 Frivolous challenges, and those made for an improper purpose (e.g., to
28 harass or impose unnecessary expenses and burdens on other parties)

1 may expose the challenging party to sanctions. All parties shall
2 continue to maintain the material in question as confidential until the
3 court rules on the challenge.

4 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
5 **PRODUCED IN OTHER LITIGATION**

6 a. If a party is served with a subpoena or a court order issued in other
7 litigation that compels disclosure of any information or items
8 designated in this action as “CONFIDENTIAL,” that party must:

9 (a) promptly notify the designating party in writing and include
10 a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the
12 subpoena or order to issue in the other litigation that some or all
13 of the material covered by the subpoena or order is subject to
14 this agreement. Such notification shall include a copy of this
15 agreement; and

16 (c) cooperate with respect to all reasonable procedures sought
17 to be pursued by the designating party whose confidential
18 material may be affected.

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1 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

- 2 a. If a receiving party learns that, by inadvertence or otherwise, it has
3 disclosed confidential material to any person or in any circumstance
4 not authorized under this agreement, the receiving party must
5 immediately (a) notify in writing the designating party of the
6 unauthorized disclosures, (b) use its best efforts to retrieve all
7 unauthorized copies of the protected material, (c) inform the person or
8 persons to whom unauthorized disclosures were made of all the terms
9 of this agreement, and (d) request that such person or persons execute
10 the “Acknowledgment and Agreement to Be Bound.”

11 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
12 **OTHERWISE PROTECTED MATERIAL**

- 13 a. When a producing party gives notice to receiving parties that certain
14 inadvertently produced material is subject to a claim of privilege or
15 other protection, the obligations of the receiving parties are those set
16 forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is
17 not intended to modify whatever procedure may be established in an
18 e-discovery order or agreement that provides for production without
19 prior privilege review. Parties shall confer on an appropriate non-
20 waiver order under Fed. R. Evid. 502.

21 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

- 22 a. Within 60 days after the termination of this action, including all
23 appeals, each receiving party must return all confidential material to
24 the producing party, including all copies, extracts and summaries
25 thereof. Alternatively, the parties may agree upon appropriate
26 methods of destruction. Notwithstanding this provision, counsel are
27 entitled to retain one archival copy of all documents filed with the
28 court, trial, deposition, and hearing transcripts, correspondence,

1 deposition and trial exhibits, expert reports, attorney work product,
2 and consultant and expert work product, even if such materials
3 contain confidential material. The confidentiality obligations imposed
4 by this agreement shall remain in effect until a designating party
5 agrees otherwise in writing or a court orders otherwise.

6 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
7 Order and provide copies to counsel.

8 **DATED** this 9th day of July 2021.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

14 Stanley A. Bastian
15 Chief United States District Judge
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